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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Note verbale dated 11 January 2008 from the Permanent Missions to the United Nations of Afghanistan, Antigua and Barbuda, the Bahamas, Bahrain, Bangladesh, Barbados, Botswana, Brunei Darussalam, the Central African Republic, China, the Comoros, the Democratic People's Republic of Korea, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Grenada, Guinea, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, the Lao People's Democratic Republic, the Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Mongolia, Myanmar, Nigeria, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Somalia, the Sudan, Suriname, Swaziland, the Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Uganda, the United Arab Emirates, Yemen and Zimbabwe addressed to the Secretary-General

The Permanent Missions to the United Nations in New York listed below present their compliments to the Secretary-General of the United Nations and have the honour to refer to resolution 62/149, entitled "Moratorium on the use of the death penalty", which was adopted by the Third Committee on 15 November 2007, and subsequently by the General Assembly on 18 December 2007 by a recorded vote. The Permanent Missions wish to place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law, for the following reasons:

(a) There is no international consensus that the death penalty should be abolished. The votes on this resolution in the sixty-second session of the General Assembly have confirmed this fact, and the issue has proven to be a divisive one. Article 6 of the International Covenant on Civil and Political Rights states, inter alia, that "in countries which have not abolished the death penalty,

sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime". This view was reflected previously in the joint statements contained in (i) document E/CN.4/2005/G/40, in which 66 delegations disassociated themselves from Commission on Human Rights resolution 2005/59; (ii) document E/CN.4/2004/G/54, in which 64 delegations disassociated themselves from Commission on Human Rights resolution 2004/67; (iii) document E/CN.4/2003/G/84 in which 63 delegations disassociated themselves from Commission on Human Rights resolution 2003/67; (iv) document E/CN.4/2002/198, in which 62 delegations disassociated themselves from Commission on Human Rights resolution 2002/77; (v) documents E/CN.4/2001/161 and Corr.1, in which 61 delegations disassociated themselves from Commission on Human Rights resolution 2001/68; (vi) document E/CN.4/2000/162, in which 51 delegations disassociated themselves from Commission on Human Rights resolution 2000/65; (vii) document E/1999/113, in which 50 delegations disassociated themselves from Commission on Human Rights resolution 1999/61; (viii) documents E/1998/95 and Add.1, in which 54 delegations disassociated themselves from Commission on Human Rights resolution 1998/8; (ix) documents E/CN.4/1998/156 and Add.1, in which 51 delegations expressed their reservations prior to the adoption of Commission on Human Rights resolution 1998/8; and (x) document E/1997/106, in which 31 delegations disassociated themselves from Commission on Human Rights resolution 1997/12;

(b) In his statement to the plenary of the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998, the President of the Conference declared that the debate at the Conference on the issue of which penalties should be applied by the Court showed that there is no international consensus on the inclusion or non-inclusion of the death penalty, and further that not including the death penalty in the Rome Statute would not in any way have a legal bearing on national legislations and practices with regard to the death penalty, nor should it be considered as influencing, in the development of customary international law or in any other way, the legality of penalties imposed by national systems for serious crimes. Accordingly, the Rome Statute of the International Criminal Court, which is only applicable to States parties, maintains that nothing in part 7 of the Statute affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this part;

(c) Capital punishment has often been characterized as a human rights issue in the context of the right of the convicted prisoner to life. However, it is first and foremost an issue of the criminal justice system and an important deterring element vis-à-vis the most serious crimes. It must therefore be viewed from a much broader perspective and weighed against the rights of the victims and the right of the community to live in peace and security;

(d) Every State has an inalienable right to choose its political, economic, social, cultural and legal justice systems, without interference in any form by another State. Furthermore, the purposes and principles of the Charter of the United Nations, in particular, Article 2, paragraph 7, clearly stipulates that nothing in the Charter shall authorize the United Nations to intervene in matters which

are essentially within the domestic jurisdiction of any State. Accordingly, the question of whether to retain or abolish the death penalty should be carefully studied by each State, taking fully into account the sentiments of its own people, state of crime and criminal policy. It is improper to make a universal decision on this question or to prescribe to Member States actions that fall within their domestic jurisdiction, or attempt to change, by way of a General Assembly resolution, the stipulations under international law that were reached through a comprehensive negotiation process;

(e) Some Member States have voluntarily decided to abolish the death penalty, whereas others have chosen to apply a moratorium on executions. Meanwhile, many Member States also retain the death penalty in their legislations. All sides are acting in compliance with their international obligations. Each Member State has decided freely, in accordance with its own sovereign right established by the Charter, to determine the path that corresponds to its own social, cultural and legal needs, in order to maintain social security, order and peace. No side has the right to impose its standpoint on the other.

The Permanent Missions to the United Nations listed below wish to request the circulation of the present note verbale as a document of the sixty-second session of the General Assembly.

1. Islamic Republic of Afghanistan
2. Republic of Antigua and Barbuda
3. Commonwealth of the Bahamas
4. Kingdom of Bahrain
5. People's Republic of Bangladesh
6. Barbados
7. Republic of Botswana
8. State of Brunei
9. Central African Republic
10. People's Republic of China
11. Union of the Comoros
12. Democratic People's Republic of Korea
13. Commonwealth of Dominica
14. Arab Republic of Egypt
15. Republic of Equatorial Guinea
16. State of Eritrea
17. Federal Democratic Republic of Ethiopia
18. Republic of the Fiji Islands
19. Grenada
20. Republic of Guinea
21. Republic of Guyana
22. Republic of Indonesia
23. Islamic Republic of Iran

24. Republic of Iraq
25. Jamaica
26. Japan
27. Hashemite Kingdom of Jordan
28. State of Kuwait
29. Lao People's Democratic Republic
30. Libyan Arab Jamahiriya
31. Malaysia
32. Republic of Maldives
33. Islamic Republic of Mauritania
34. Mongolia
35. Union of Myanmar
36. Federal Republic of Nigeria
37. Sultanate of Oman
38. Islamic Republic of Pakistan
39. Independent State of Papua New Guinea
40. State of Qatar
41. Federation of Saint Kitts and Nevis
42. Saint Lucia
43. Saint Vincent and the Grenadines
44. Kingdom of Saudi Arabia
45. Republic of Singapore
46. Republic of Somalia
47. Solomon Islands
48. Republic of the Sudan
49. Republic of Suriname
50. Kingdom of Swaziland
51. Syrian Arab Republic
52. Kingdom of Thailand
53. Kingdom of Tonga
54. Republic of Trinidad and Tobago
55. Republic of Uganda
56. United Arab Emirates
57. Republic of Yemen
58. Republic of Zimbabwe